



REPORT OF INVESTIGATION

File Number: 05-124

Agency: Georgia Merit System

Basis for Investigation: Complaint and Agency Request for Assistance

Allegations: Waste of state resources and
Improper use of a consultant

Date Opened: October 20, 2005

Investigated By: Deborah W. Copeland, Deputy Inspector General

Date of Report: February 20, 2006

James E. Sehorn, Inspector General

OFFICE OF THE INSPECTOR GENERAL



File Number: 05-124

EXECUTIVE SUMMARY

In October 2005, a state employee filed a complaint with the Office of the State Inspector General (OIG). The complainant raised two issues concerning wasteful business decisions made in 2003 by the former Commissioner of the Georgia Merit System (GMS) and a complaint that he suffered a “wrongful termination” from the agency in 2004.

First, it was alleged that approximately fifteen thousand dollars (\$15,000) to pay a cancellation fee was wasted as a result of a bad and belated decision to cancel the Spring 2003 State Professional Administrative Assistants Conference (hereinafter, “2003 Conference”) at the Sea Palms Resort in Saint Simons Island, Georgia. Second, it was alleged that the selection and use of a consultant was improper in conjunction with an agency initiative entitled the Human Resources Learning Needs Assessment, (hereinafter, “Needs Assessment”). Third, it was alleged that the complainant was wrongfully terminated from his position in the GMS because he voiced his objections to the poor business decisions of the former Commissioner.

On October 24, 2005, the Inspector General James Sehorn (IG) met with GMS Commissioner Wayne St. Claire to discuss the complaint. Commissioner St. Claire advised that he directed an internal review of the employment termination after receipt of a letter from the complainant addressing similar issues. Commissioner St. Claire requested OIG assistance in determining the merit of the other two issues and welcomed a review of the associated business practices.

The OIG investigation substantiated that the GMS paid a cancellation fee of approximately fifteen thousand dollars (\$15,000) to the hotel where the 2003 Conference was to be held and a consultant was used in the Needs Assessment initiative. In view of the circumstances, GMS officials were concerned that the conference would not produce sufficient revenue to offset required expenses. Additionally, GMS officials were concerned that the overall financial impact

incurred across the board by GMS and participating agencies would not be in keeping with the incoming Governor's administration advisory to curtail spending in light of budgetary constraints.

Regarding the selection and use of a consultant, the OIG investigation determined that former GMS Commissioner Marjorie Young selected consultant Yvonne McBride to assist with the Needs Assessment, believing her services would be of a short-term, limited nature in terms of time and circumstances. Therefore, the Fee Paid Services process established by GMS Policy Number D-6 dated February 3, 2003, was followed in lieu of a formal competition. In total, GMS paid McBride a total of twenty six thousand five hundred dollars (\$26,500) for consulting services, an amount which clearly exceeds the five thousand dollar (\$5,000) threshold where DOAS procurement policy requires a competitive bid.

In summary, while none of the actions individually can be demonstrated to be improper or illegal, the preponderance of the evidence does lead to the conclusion of a clear appearance of impropriety. In each instance, however, evidence revealed extenuating circumstances that led to the decisions that were made by former GMS officials. During the course of this investigation, other matters separate from the allegations were discovered and are addressed in the Report of Investigation.

The following recommendation was provided to the GMS:

Develop and implement a GMS Procurement Policy and Procedures Manual to address clearly:

- a. Applicability of DOAS guidelines;
- b. Authority to contract on behalf of GMS;
- c. Signature authority, to include when delegated;
- d. Requirements for legal review.

The OIG requested the GMS to provide a response within 30 days of the issuance of this report.



Report of Investigation

File No. 05-124

TABLE OF CONTENTS

I.	Basis for investigation.....	1
II.	Narrative.....	1-11
III.	Conclusion.....	11-13
IV.	Recommendation.....	13
V.	Referrals.....	13

I. BASIS FOR INVESTIGATION

In October 2005, a former employee of the Georgia Merit System (GMS) filed a complaint with the Office of the State Inspector General (OIG). The complainant raised three issues, two concerning business decisions made by GMS officials in 2003, and a third being a “wrongful termination” complaint.

First, it was alleged that approximately fifteen thousand dollars (\$15,000) was wasted by paying a conference cancellation fee for the spring 2003 State Professional Administrative Assistants Conference, (hereinafter, “2003 Conference”). The conference was originally scheduled to take place at the Sea Palms Resort in Saint Simons Island, Georgia.

Secondly, it was alleged that the selection and use of a consultant was improper in conjunction with an agency initiative entitled the “Human Resources Learning Needs Assessment,” (hereinafter, “Needs Assessment”).

On October 24, 2005, the Inspector General (IG) James Sehorn met with GMS Commissioner Wayne St. Claire to discuss the complaint. Commissioner St. Claire advised that he directed an internal review of the employment termination after receipt of a letter from the complainant addressing similar issues. Commissioner St. Claire requested OIG assistance in determining the merit of the other two issues and welcomed a review of the associated business practices.

During the course of this investigation, the OIG discovered other matters, separate from the complainant’s allegations, which are addressed later in the report.

II. NARRATIVE

A. Background

The GMS is the state’s central agency for personnel matters. The GMS assists state agencies in recruiting qualified individuals for positions within the executive branch of state government; is the state’s central recordkeeping agency for state employee data; and, monitors state personnel practices.

The GMS is organized into six divisions: Commissioner’s Office, Compensation and Staffing, Customer Services Division, Employee Benefits Division, Administration and Systems, and Division of Training and Organization Development.

The complainant, Mr. Ely Elefante, worked at GMS from November 2002 until June 2004. His official title was Director of the Training and Organization Development Division. This particular division designs and delivers workforce development services and training to agencies statewide. The GMS Commissioner Marjorie Young terminated the complainant from his Director position in June 2004. He currently works in another capacity in state

government. It was during the complainant's tenure as Division Director at GMS that he observed the events, which are the bases of his allegations.

B. Investigation

During the course of this investigation, the OIG reviewed official files, computer records, GMS policies and procedures, and interviewed present and former employees of the agency. Additionally, the OIG met with officials from Department of Audits and Accounts and Department of Administrative Services.

On October 27, 2005, the OIG interviewed Elefante about his complaint. Elefante stated that his goal in filing the OIG complaint was to clear his good name of a wrongful termination and "right the wrong" he has suffered personally and professionally. The OIG advised Elefante that the OIG would not investigate the circumstances behind his dismissal. When asked why he waited over two years before reporting the allegations to the OIG, Elefante replied that at his new job he found himself, "caught up in the day-to-day activities of running the division."

Regarding the first allegation, cancellation of the 2003 Conference, Elefante stated that on at least two occasions he discussed with former Assistant Commissioner Peggy Rosser support for holding the conference as planned. Elefante believed the 2003 Conference would, as in the previous years, pay for itself from attendance fees and would avoid the cancellation fee cost. According to Elefante, Rosser's position was that the event should be cancelled in view of the state's budget crises; otherwise, it could "place a black-eye" on Marjorie Young and herself (Rosser) who were at that time, the agency's interim leadership. Elefante stated that cancellation of the event was not a sound business decision because in effect it lost the agency fifteen thousand dollars (\$15,000).

Concerning the second allegation, improper selection and use of a consultant, Elefante stated that Young and Rosser directed him to hire McBride as a consultant. Elefante stated that to his knowledge no selection process occurred. He believes a contract existed for McBride's consultant work although he never saw it. He recalled her selection as being contrary to the way that GMS typically conducted business by committee involvement and following procurement procedures in the selection of consultants. Elefante stated that he believed consultant services were actually needed but explained that he takes issue with the process Young and Rosser used to choose McBride. He also takes issue with the "exorbitant amount" of McBride's hourly rate. Elefante believed McBride received five hundred dollars (\$500) an hour because he recalls seeing a report reflecting expenditures.

According to Elefante, he received complaints from several employees regarding the conduct of McBride during the facilitation of employee focus groups. He subsequently addressed concerns to Young and Rosser. Elefante believes this frank feedback alienated him with Young and Rosser. Elefante provided the

names of several GMS employees who he thought, if interviewed by the OIG, would corroborate his allegations.

On November 1, 2005, the OIG interviewed Carolyn Perry, Human Resources Development Program Manager 2, of the GMS Training Division. Perry worked for complainant Ely Elefante while he served as division director from 2002 to 2004.

Perry stated that she believes that GMS wasted \$15,000 in canceling the 2003 Conference. Perry explained that during 2002, she and her staff worked diligently on the conference details. She recalled frequent discussion about the State's budget woes after Governor Perdue's election in November 2002 and acknowledged articulating staff concerns to Elefante as to whether or not the conference would occur. Perry stated that she specifically addressed with Elefante the fact that the fee for canceling the hotel increased during the window of time closest to the event date. She recalled pointing out that if they were going to have to cancel, they should do so before November 26, or else the agency would pay a cancellation fee of approximately fifteen thousand (\$15,000) per the contract. Perry emphatically believes that if decision makers postponed the conference, staff could have made necessary adjustments to minimize expenditures, and therein completely avoid penalty associated with canceling business with the hotel.

Perry remembers preparing budget estimates twice reflecting two-hundred anticipated attendees. The estimates showed that GMS "Revenue" would have been twenty-five thousand four hundred dollars (\$25,400), while the "Expenses" would have been twenty four thousand one hundred eighty dollars (\$24,180), making it almost a "wash" for the agency. According to Perry, other state agencies had already budgeted for this employee training opportunity, including the responsibility for travel, lodging, per diem, etc.

On November 1, 2005, the OIG interviewed Donna Denman, Human Resources Project Coordinator, of the GMS Training Division. Denman, a staff member who worked on details of the 2003 Conference, supports the waste allegation.

Denman stated that the cancellation fee of fifteen thousand dollars (\$15,000) derived absolutely no benefit for GMS and the decision did not make "good business sense." Denman pointed out that despite copious notes, and record keeping on the part of division staff, nothing documents the February 17, 2003, decision to cancel. However, she recalled Elefante telling staff that subsequent to a meeting between Commissioner Young and Chief Operating Officer Jim Lientz, Young canceled the conference.

Denman recalled that Assistant Commissioner Peggy Rosser sent an email to employees stating that McBride was being appointed as Elefante's successor, after his termination in 2004. Denman also stated that McBride's appointment never came to fruition. Details discovered during the OIG investigation related to

this personnel action are addressed later in the section entitled “Additional Matters.”

On November 1, 2005, the following individuals were interviewed but could provide no information relevant to this investigation: Venus Stone, Human Resources Program Manager, of the GMS Training Division; and Dr. Marie McIntyre, a former consultant for GMS.

On November 2, 2005, the OIG interviewed Lynn Powers, GMS Budget Officer. Powers stated that the cancellation clause “assessed penalty of 40% or seven thousand four hundred dollars (\$7,400.00)” upon signing of the contract in 2002 by former Training Division Director Dianne Schlachter, the complainant’s predecessor.

Powers recalled the sense of uncertainty felt by GMS leadership under a new administration as well as the potential for negative media attention during a tight budget period.

Powers provided the OIG with copies relating to the April 30, 2003, GMS check made payable to Sea Palms for fourteen thousand six hundred seventy five dollars (\$14,675.00). The money came from “Agency Assessment/State dollars,” the major source of agency funding.

Concerning the second allegation, Powers stated that consultant McBride facilitated six focus groups and was paid twenty six thousand five hundred (\$26,500) for her services via four checks. Powers provided the OIG copies of pertinent information that refutes the fact that McBride earned five hundred dollars (\$500) *per hour*. Records document McBride earned five hundred dollars (\$500) *per day*.

Powers stated that she personally called attention to her superiors including Peggy Rosser, Gail Love, and Marjorie Young that the fees paid to McBride were in excess of five thousand dollars (\$5,000), which necessitated following the bid/purchasing process of Department of Administrative Services (DOAS). Powers stated that she also called her supervisors’ attention to the fact that “Per Diem and Fees”, the account McBride was paid from, is typically used for “short term projects, not of a substantial dollar amount.”

Powers emphasized that she personally finds McBride to be a dynamic individual who did an exceptional job for GMS; however, she supports the allegation that improper selection occurred.

On November 4, 2005, the OIG interviewed Latoya Graham, former GMS Director of Legal Services from January 2001 to December 2003. According to Graham, most of the contracts that she reviewed dealt with benefits programs GMS administered. She said that occasionally she reviewed other issues pertaining to contractors, consultants or work requiring competitive bidding.

Graham advised the OIG that there were inconsistencies within the agency as to review of contracts. Additionally, she recalled a DOAS audit in either 2002 or 2003, which cited deficiencies with contracts and other issues. Graham stated that during her tenure at GMS, the agency worked on policies, procedures, and tried to devise forms to implement consistency, but that nothing was ever formalized while she was there.

Regarding the first allegation, Graham does not recall ever having the opportunity to review the 2002 signed contract between GMS and Sea Palms. According to Graham, she rarely, if ever, reviewed contracts entered into by division directors.

Graham recalled some degree of involvement as Legal Services Director during the time that management was trying to evaluate whether or not to hold the 2003 Conference. She stated that she recalled discussion about a budget analysis but never saw a document outlining pros/cons or financial information. Additionally, she remembered staff discussion about "low participation from agencies questioning sending their administrative staff to Sea Palms during a tight budget period." She recalled hearing the theme, "What if we (GMS) go forth as planned and they don't send their employees?"

Graham specifically remembered that Commissioner Young wanted her to check with Harold Melton, Governor Perdue's Executive Counsel, for guidance as to hosting the event. Graham stated that Melton expressed appreciation to her for keeping him abreast of the agency's review of the issue; however, she does not recall email or conversation wherein Melton may have advised GMS to cancel the conference. Graham told the OIG that she advised Commissioner Young, "It boils down to an agency business decision." She also recalled great concern on Young's part for the agency to make the right decision.

The OIG showed Graham email correspondence wherein it appears that the decision was made to cancel the conference sometime between February 7 and February 12, 2003.

Graham recalled drafting a letter to Sea Palms asking the hotel for consideration in an assessment decrease due to the cancellation, although she knew contractually the agency would be held to the cancellation fee.

Concerning the second allegation, Graham does not know McBride and does not recall ever having reviewed this particular consultant arrangement. She stated that had she reviewed the arrangement, she would have advised her superiors that the agency should comply with State Purchasing Guidelines since McBride's services totaled more than five thousand dollars (\$5,000).

On November 16, 2005, the OIG interviewed Charles Nixon, GMS Procurement Officer since April 2005. Although Nixon emphasized that he did not work at GMS at the time the alleged incidents took place, he stated that both the hotel

selection for the 2003 Conference and the consultant's services should have been competitively bid per DOAS guidelines.

Nixon stated that at the time of his employment interview earlier this year, his supervisor, Myra Kibler, advised him that there was much work to be done including but not limited to, clean up of the agency's assets management program; establishment of internal procedures relating to procurement; and development of an agency procurement manual in compliance with DOAS guidelines. Nixon stated that Kibler informed him that DOAS had not approved the existing "draft" GMS Agency Purchasing Manual, apparently compiled sometime in 2000, because it was not "agency specific enough."

When questioned as to why he thought five years had lapsed and the manual has yet to be revised and approved by DOAS, Nixon stated that the procurement officer position had encountered some turnover, naming at least two individuals, Tanea Nixon and Steve Nixon, who had the job prior to him.

On November 17, the OIG interviewed Kathleen Carey, GMS Human Resources Director. Carey stated that she was not involved with any of the details surrounding the planning or cancellation of the 2003 Conference. She stated that it was her understanding that the Legal Director routinely reviews all contracts.

Carey recalled Yvonne McBride working for GMS as a consultant in the fall of 2003, although she (Carey) was not involved in the selection process. Carey explained that McBride was paid out of Per Diem and Fees. She provided the OIG with a copy of GMS Internal Policy D-6, dated February 3, 2003, which outlines this agency practice.

On November 29, 2005, I interviewed Gail Love, former Deputy Commissioner at GMS. Love stated that Peggy Rosser and Marjorie Young made the decision to cancel the 2003 Conference, perhaps with the direction of Jim Lientz, Chief Operating Officer. She recalled that the decision was due to budget cuts and anticipation of fewer participants, and to delay the conference must not have been a viable option.

When questioned about whether or not it was routine for division directors to sign contracts on the part of the agency, Love stated it was not a common practice. However, she emphasized that it was management's preference that legal review all contracts. Regarding the existence of any internal policies, she recalled that an internal policy for the handling of contracts was written at some point in the last several years but was never formally issued. She recalled that the draft was "lost in the shuffle." She acknowledged that the agency had experienced personnel turnovers both in the legal position and in the procurement position.

Concerning the second allegation, Love stated that Yvonne McBride was not improperly selected. She acknowledged that there was no contract and that GMS often paid for consultant services from the Per Diem and Fees category.

Love stated in her professional opinion, "The agency got what it paid for in consultant services from McBride because she was very competent."

Love also acknowledged the poor results GMS received after a DOAS Purchasing Review in 2001. She recalled the agency experienced high turnover with the procurement officer position. She stated that the person responsible for correcting noted deficiencies was Myra Kibler, an extremely competent employee still working with GMS.

On December 5, 2005, the OIG interviewed Peggy Rosser, former GMS Assistant Commissioner. According to Rosser, GMS canceled the 2003 Conference because of an economic downturn and the fact that Governor Perdue's office directed agencies to curtail travel and expenditures. She believes there may have been a written directive but she was unable to produce it. Rosser recalled that she, Commissioner Young, and others believed it was the most responsible decision to cancel the event, primarily because of the budgetary impact it would have on all agencies.

Rosser said that GMS management realized that although training was part of their primary mission, this particular conference was elective in nature on the part of other agencies. In deciding whether to host the conference, GMS realized that although important in nature, it could be viewed as "nonessential." GMS also considered the fact that some agencies had already begun to cancel their attendees. GMS decided it would be cheaper to cancel and accept the hotel penalty associated with canceling the event, than to host it at Sea Palms and not have the expected number of participants. Rosser recalled that delaying the event to a later date was not an option because the hotel could not commit.

When questioned about whether or not it was routine for division directors to effect contracts on the part of the agency, Rosser stated that directors typically had limited delegated signature authority. She stated that it was customary practice for legal to review all contracts.

With regard to the second allegation, Rosser stated that Commissioner Young requested that Yvonne McBride work as a consultant because of her expertise. Rosser stated that McBride was not inappropriately selected, as there was established criteria for the work the consultant was expected to do for GMS. Rosser acknowledged that there was no competitive bid process and that GMS often paid for consultant services from the Per Diem and Fees category. Rosser stated that it was the agency's belief that McBride's work would be short term in nature, but as the project evolved and became more extensive, her services were needed longer than initially expected, thus resulting in a larger cumulative amount being paid for her consulting services.

Rosser recalled only one situation wherein an employee complained that McBride was "a little abrasive or perhaps overzealous" but that it was determined that McBride may have been under time constraints. Otherwise, Rosser stated that McBride served the agency exceptionally well as a consultant.

Regarding a subsequent offer of employment to McBride in 2004, Rosser recalled that McBride was looking to be reinstated in state government. Per Rosser, Commissioner Young felt McBride's credentials made her a viable candidate for leadership within the agency. Rosser recalled that Commissioner Young discussed it with Chief Operating Officer Jim Lientz and initially gained support to hire McBride; then made a formal employment offer. Subsequently, Young attended another meeting because person's unknown raised questions about the hiring of McBride and soon thereafter, Commissioner Young rescinded the offer. According to Rosser, the position was not advertised but this can be a common practice for high-level positions in state government. Rosser maintains that GMS management did not do anything outside of policy and made the best possible decision in each case.

On December 12, 2005, the OIG interviewed Marjorie Young, former GMS Commissioner. Young stated that she canceled the 2003 Conference because she believed it was the best option at the time. She recalled a time of extreme budget cuts in state government and that several agencies had begun to cancel their planned participants, causing GMS to evaluate whether it would be worth the expense of holding it. Young stated that she knew that people would negatively view the holding of a state conference at Sea Palms Resort, particularly in a time of budget constraints. She does not recall evaluating the idea of "delaying" the conference or if it was even a possibility with the contracted hotel.

Young could not recall receipt of any verbal or written directive to cancel the conference from Chief Operating Officer Jim Lientz or anyone from Governor Perdue's office. She stated that it is her belief that the Training Division Director, Ely Elefante, did a good job of analyzing pros and cons of holding the conference and that he provided her with reliable information on which to base her ultimate decision. She stated that as Commissioner, she believed GMS should cancel the event in order to be frugal and not attract negative attention to the state.

Regarding the second allegation, Young acknowledged that Yvonne McBride worked for GMS as a consultant for a brief period. Young explained that McBride previously worked for her approximately eight years in the 1980's and early 1990's at Youth Services. Young stated she knew from having worked with McBride that she possessed excellent skills in the area of training. Because of her expertise and knowledge of state government, Young suggested McBride work as a consultant for GMS.

Young stated that it depended on the situation whether competitive bidding occurred. She explained that in many instances, GMS used sole source procedures with justification for their actions. Per Young, consultants were typically hired for a short-term project, and if they performed well, GMS would again choose their services.

Young believes GMS made the best possible decision in each situation discussed above. Additionally, Young acknowledged offering McBride a full-time position at GMS in July 2004 and subsequently rescinding it.

During the period of November 29 and December 20, 2005, the OIG attempted telephonic contact on numerous occasions with McBride at her residence. However, we were never able to reach McBride in order to allow her an opportunity to address the allegation.

On January 6, 2006, the OIG spoke with Chief Operating Officer Jim Lientz concerning his recollection of GMS business decisions made in 2003. Lientz stated he does not specifically recall Young approaching him concerning canceling the conference. Lientz stated that considering the State's budget situation at the time, it is highly likely that he agreed with her decision, were it mentioned.

Additionally, Lientz was unable to specifically recall discussion with Young concerning a Summer of 2004 offer of GMS employment to McBride but stated that in all likelihood he told Young the hiring should not occur. Lientz stated his belief was based on the fact that McBride was previously terminated from an agency head position in 2003 after an audit revealed numerous inappropriate management actions.

The OIG investigation also included inquiries of DOAS and Department of Audits and Accounts (DOAA) officials in an attempt to corroborate information provided during witness interviews. Information derived from these interviews revealed evidence that demonstrated that five years ago there were significant deficiencies in GMS business practices.

For example, during an interview with Debra Blount, State Procurement Administrator, the OIG confirmed that in 2001 DOAS conducted a "Purchasing Process Review" of GMS. The DOAS report of this review clearly documented noncompliance with state purchasing policies and procedures. Areas of concern found during the review included: Internal procedures nonexistent, purchase orders processed incorrectly, lack of competitive bidding, not utilizing statewide contracts, and purchases that exceeded agency's Delegated Purchase Authority without permission from the State Purchasing Officer. GMS officials concurred with the findings and recommendations of DOAS and pointed out that the last audit was conducted reportedly thirteen years prior. Subsequently, DOAS conducted a follow-up review in 2003 documenting corrective measures, which GMS had reportedly implemented.

The OIG also asked Blount for information relating to the appropriate procedure for an agency to hire a consultant. Blount explained that certain types of consulting work are exempt from the normal bid process and that an agency has some leeway when determining its needs. Blount referenced the Georgia Procurement Manual, Chapter 2, Section 3, pages 2-2 through 2-3; therein the Exemptions from State Purchasing Requirements are set forth. She advised that

in order to determine the specifics as to whether improper selection of a consultant occurred, the OIG would have to inquire directly with the agency.

During an interview with David Pennington, Audit Supervisor, State Government Division, DOAA, the OIG gleaned additional information relating to guidance GMS and other agencies were given relating to a “Best Practices” reference. Particular noteworthy, is a published 2003 Department of Audits and Accounts report entitled, “Components of an Effective Contract Monitoring System.” This report provides agency management with an overview of methods their agency should be using and serves as a resource for ensuring that contracted services are adequately delivered. DOAA disseminated this report to agency heads across state government, including GMS.

At the OIG’s request, Pennington reviewed DOAA records relating to GMS Management Reports for FY2001-2004. Pennington stated that GMS received no audit findings during any of those years but that in 2003 and 2004, DOAA issued points, or items of potential interest, to the agency. These points, however, did not involve contract management practices.

C. Additional Matters Arising During Investigation

- (1) Questionable practices occurred in 2003 when former Deputy Commissioner Gail Love retired from state service and immediately returned to work in the same capacity until 2004; and
- (2) Questionable practices occurred in 2004 surrounding an employment offer to Yvonne McBride

Concerning the first questioned practice, the investigation confirmed that former Deputy Commissioner Gail Love retired from state service on March 1, 2003, and immediately continued to serve in “the same capacity”, although in an hourly position. This arrangement lasted for approximately one and a half years until October 31, 2004 (Commissioner Young’s retirement date). While working in an hourly status, Love continued to supervise employees, manage performance evaluations, approve and sign agency expenditures and other duties as previously assigned prior to retirement.

The investigation determined that this was an acceptable practice in compliance with Employee Retirement System (ERS) guidelines for “Return to Work after Retirement.” These guidelines allow a retiree’s return to work for one thousand forty (1,040) hours per year, without adversely affecting their pension. During a witness interview with the Human Resources Director of GMS, the OIG learned that Love actually worked and contributed more to the agency than those allotted hours. Reportedly, Commissioner Young delegated authority to Love to continue acting as Deputy Commissioner, including all duties as previously assigned. However, the investigation confirmed that although not illegal, personnel transactions were “manipulated” by the agency in that from April 1 to July 1, 2003, GMS records reflected Love as filling a salaried position when she was in

reality, being paid hourly. Reportedly, GMS did this because they feared potentially losing the position were it not filled during the budget process.

Concerning the second questioned practice, the OIG investigation determined that Commissioner Young offered Yvonne McBride employment as Training Director on July 23, 2004. The position was not advertised; thus, no other applicants were screened. McBride accepted the offer on July 26, 2004. Subsequently, on August 9, 2004, Commissioner Young formally rescinded the offer of employment to McBride based on a decision that was effective August 5, 2004.

IV. CONCLUSION

1) Allegation One: The OIG investigation confirmed these facts:

Former GMS employee Diane Schlachter, Training Division Director, signed a contract with Sea Palms Golf & Tennis Resort, on March 15, 2002. As a division director, Schlachter apparently had delegated authority to sign contracts on behalf of GMS, although no supporting documentation can be found. The contract was for the Spring Conference for Administrative Professionals, March 19-21, 2003.

Existing agency files do not reflect that any level of review occurred with this contract beyond the division director, including a review by the legal services director.

The cancellation clause contained in the 2002 contract clearly reads,

“Should it become necessary for Spring Conference for Administrative Professionals before your meeting dates, to cancel the above outlined function, then Sea Palms Golf & Tennis Resort will be entitled to liquidated damages (agreed not to constitute a penalty) based on the following scale”:

3/01/02-7/25/02 40% of total anticipated guest room revenue from arrival which = \$7,400.00

7/26/02-11/26/02 60% of total anticipated guest room revenue from arrival which = \$11,100.00

11/27/02-3/18/03 85% of total anticipated guest room revenue from arrival which = \$15,725.00

Records reflect that subsequent to this particular contract, the agency has made positive attempts in striving to change contract language to provide more latitude when doing business with hotels. The agency reportedly currently makes every effort to use language, which reads:

“Neither party shall be liable for any delays or losses due to a party’s failure to perform its obligations there under in the event that such failure is caused by events or circumstances beyond its control, including but not limited to: acts of God, national

emergencies, mandates from State Government, or a determination by the commissioner of Personnel Administration that it is in the State's best interest to terminate this agreement, the Georgia Merit System will not be held accountable or responsible for the payment."

Witness interviews suggest inconsistencies with every day business practices such as *who*; i.e., legal or other agency officials, or *when* any contract was reviewed during the tenure of previous agency leadership.

Records reflect that the decision to cancel the conference occurred sometime between February 7-12, 2003, only six weeks or so before the scheduled event. Therefore, the decision resulted in the stiffest cancellation penalty. Considering the fact that the new Governor's administration was transitioning, it was probably completely unrealistic to think that a decision to cancel could have been made prior to Nov 26, 2002 (which would have reduced the penalty by only four thousand dollars (\$4,000).

Witness interviews and records reflect that the decision to cancel the event was in fact, made in light of budgetary concerns. For example, Governor Perdue's 2003 Budget Address to the General Assembly stated,

"..These are tough times. Our state, along with the nation, has been struck by recession. Thousands of Georgians have lost their jobs. Our state revenues have fallen short of projections...and were already declining when the General Assembly adopted the fiscal 2003 budget last spring. That budget included 5% cuts to department budgets across the board. After the start of the fiscal year, an additional 5% cut was required. With these cuts, we have pared significant savings out of the state budget. We have done so responsibly, without jeopardizing vital functions and without eliminating current job..."

It would be time intensive and at best an approximation to try to determine whether money was "wasted" by canceling the conference. Certainly, the state would have expended more than \$15,000 of state funds across the board, had all agencies sent their administrative staff to the conference.

FINDING for Allegation One: The cancellation of the 2003 Conference with the resulting fee of fourteen thousand six hundred seventy five dollars (\$14,675.00) was a reasonable business decision. There was no waste of state resources.

2) Allegation Two: The OIG investigation confirmed these facts:

Records reflect that competitive bidding did not occur for Yvonne McBride's consulting services.

Former Commissioner Marjorie Young selected McBride as a consultant because of her expertise and knowledge of state government.

Commissioner Young authorized McBride to consult on a short-term basis. GMS officials followed their internal policy on Fee Paid Services, which allows for the use of consultants.

Existing agency files document that McBride submitted a “Justification of Work” on each invoice.

Existing agency files document that GMS paid McBride via four checks, totaling twenty six thousand five hundred dollars (\$26,500).

The complainant cited that McBride received a payment amount of five hundred dollars (\$500.00) per hour in his allegation. Records show, however, that she was paid five hundred dollars (500.00) per day.

FINDING for Allegation Two: There was an appearance of a conflict of interest in the selection and use of consultant Yvonne McBride. Initially, the decision to use McBride rather than issue a Request for Proposal was reasonable. As events unfolded however, former Commissioner Young allowed the appearance of impropriety to develop by the continued use of McBride for a total fee that would have required the use of competitive procurement. There is no clear evidence, other than rank speculation, that Commissioner Young intentionally avoided the competitive process.

In accordance with O.C.G.A. 45-20-1, the Merit System exists to assist state government in operating within a framework of consistent personnel policies and practices to promote workforce productivity and sound business practices. The OIG concludes that this agency should serve as the model for others to emulate and should strive to avoid management decisions that suggest even an appearance of impropriety.

V. RECOMMENDATION

The OIG offers the following recommendation to the Georgia Merit System:

Develop and implement a GMS Procurement Policy and Procedures Manual to address clearly:

- a. Applicability of DOAS guidelines;
- b. Authority to contract on behalf of GMS;
- c. Signature authority, to include when delegated;
- d. Requirements for legal review.

The OIG requests the GMS to provide a response within 30 days of the issuance of this report.

VI. Referrals

There are no referrals relating to this complaint.